Supreme Court, U.S.
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No. 02-609

IN THE

Supreme Court of the United States

ERIC RINGSRED,

Petitioner,

v.

(1) CITY OF DULUTH, a municipal corporation; and the following City officials individually and in their official capacities; (2) GARY L. DOTY, Mayor; (3) CYNTHIA ALBRIGHT, Assistant City Attorney; (4) BRIAN BROWN, City Attorney; (5) ROBERT ASLESON, Assistant City Attorney; (6) JOHN SCHWEIGER, Special Projects Manager; (7) JOHN SMEDBERG, Assistant City Attorney; (8) DULUTH ECONOMIC DEVELOPMENT AUTHORITY and its Director, CYNTHIA ALBRIGHT, individually and in her official capacity; (9) TEAM DULUTH; (10) SOFT CENTER-DULUTH, INC.; (11) MICHAEL McNAMARA; (12) THE DULUTH AREA CHAMBER OF COMMERCE and (13) its CEO DAVID ROSS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS TEAM DULUTH, THE DULUTH AREA CHAMBER OF COMMERCE, MICHAEL McNAMARA, AND DAVID ROSS

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COUNTER STATEMENT OF THE CASE

Petitioner's claims are based on wide-ranging allegations that Respondents acted improperly to harm him during the course of his 1998 legal challenge to a downtown Duluth, Minnesota, development project referred to as the "Soft Center" or "Tech Village." In the name and on behalf of the State of Minnesota, Petitioner had sued the City of Duluth, a developer and others in State Court seeking to enjoin the project as violating state environmental laws. On behalf of the State, he claimed the project area was a protected historic resource that would be destroyed by the development and that the project should not proceed because development alternatives existed and proper environmental reviews had not been completed.

After a trial in which all of Petitioner's witnesses testified and testified truthfully, the State Court found the project area to constitute a protected natural resource and issued a mandatory injunction requiring the area to be treated as such in the future, but denied the request for injunctive relief finding there was no reasonable alternative to the planned development. The Minnesota Court of Appeals affirmed. The Trial Court later heard and denied a motion by Petitioner for contempt sanctions in which Petitioner argued that there had been misconduct by the defendants and others in that action related to the trial.

Petitioner and his wife then initiated this action asserting that the thirteen Respondents herein had improperly deprived Petitioner of a fair trial, harmed his reputation and violated the State Court mandatory injunction. In Count I, they asserted that Respondents had, under color of state law, acted to deprive them of their federal rights in violation of

42 U.S.C. § 1983. In Count II, they claimed Respondents had violated various state, federal and local laws. In Count III, they asserted that Respondents had unlawfully recruited businesses to the Soft Center. In Count IV, they claimed Respondents had acted to injure their reputation. And in Count V, they alleged that Respondents' actions had injured their family. They requested relief including an order compelling future compliance with the State Court mandatory injunction and an award of monetary damages.

The City Respondents filed a motion to dismiss or in the alternative for summary judgment.[1] Thereafter, the Soft Center Respondents and Chamber Respondents filed motions for summary judgment.[2]

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1. The City Respondents are comprised of all named Respondents other than the Chamber Respondents and Soft Center Respondents. The Chamber Respondents are the Duluth Area Chamber of Commerce, Team Duluth, David Ross and Michael McNamara. The Soft Center Respondents are Soft Center-Duluth, Inc. and Michael McNamara.

2. The Chamber Respondents' motion argued that Petitioner's denial of access to court claims were not actionable because the Chamber Respondents were not acting under color of state law, did not act in retaliation, were properly exercising their rights to free speech and did not deny Petitioner access to court. The motion further argued that Petitioner's allegations of harm to reputation, which were based on assertions that the Chamber Respondents placed ads in local newspapers and made statements at a rally, were legally deficient because they were barred by the applicable statute of limitations and because the alleged statements were not defamatory. Finally, the Chamber Respondents joined in the City Respondents' arguments that Petitioner lacked standing to assert his claims and lacked subject matter jurisdiction based on the *Rooker Feldman* doctrine.

The Magistrate Judge, by Order and Report and Recommendation dated October 22, 2001 (hereafter referred to as "Report"), recommended dismissal of Petitioner's claims. In doing so, the Magistrate Judge wrote

> [n]otably, the Plaintiffs allege no occasion when they were unable to present claims, or evidence in support of any claim, to the State Court, or which they have declined to advance a claim, make an argument, or otherwise petition a Court for relief, on account of some fear of retaliation at the hands of the Defendants.

Pet., App. at 16. The District Court adopted the Report and by Order of November 26, 2001, dismissed the complaint with prejudice. In an unpublished opinion, the Eighth Circuit Court of Appeals affirmed the dismissal of the federal claims with prejudice.

Petitioner here challenges only the dismissal of Count I of his complaint. The grounds for dismissal of that claim were not, as asserted by Petitioner, that public interest litigants have no constitutional rights. Rather, the actual holding was far narrower in scope.

Addressing Petitioner's claim that he had been deprived of due process, the District Court held that Petitioner had failed to establish the first element of a due process claim, i.e., the existence of a personal liberty or property interest. In support of that holding, the District Court explained that Petitioner had sued in State Court on behalf of the State of Minnesota and had made no showing of any personal property interest he was vindicating. It further found that if any liberty or property interest had been impaired, it had been the interest

of the State of Minnesota, and that the State did not join in Petitioner's Section 1983 claim nor was the State entitled to protections under either the Fourteenth Amendment or Section 1983. Next, addressing Petitioner's claim of denial of access to the courts, the District Court provided two alternative bases for dismissal; first, that the interests Petitioner was pursuing in State Court had been representational interests and not those he had a right to litigate on his own, and second, that the claim sought in practical effect to overturn the State Court decision and was therefore barred by the *Rooker Feldman* doctrine.

REASONS FOR DENYING THE PETITION

Petitioner argues that the decision below improperly holds that public interest litigants, such as persons suing on behalf of the public under state environmental legislation, have no constitutional rights regarding due process, equal protection, or fair access to courts when it comes to such litigation. According to Petitioner, such a holding conflicts with the recognition by this Court and by United States Courts of Appeal of the right to petition on matters of public concern, conflicts with this Court's recognition of a cause of action as a species of property, and therefore deprives private citizens in the Eighth Circuit of the right to petition not only on the state environmental laws involved in this case, but also on all other matters of public concern. The decision does not hold what Petitioner claims it does. The loss of private citizen rights envisioned by Petitioner arises from his erroneous interpretation of the ruling, not from the actual Eighth Circuit decision.

The decision below does not raise the question presented by the Petition. The question presented inquires into

Petitioner's personal rights. In contrast, the decision below arises from Petitioner's choice during the underlying State Court action to represent the interests of the State of Minnesota, not his own. The Eighth Circuit's decision properly recognizes that factual foundation and appropriately analyzes Petitioner's claims from that perspective. The Eighth Circuit decision does not conflict with a person's right to petition for redress or the recognition of a personal cause of action as a species of property. Rather, it merely confirms the District Court's narrow holding on the facts of this case that where a litigant chooses to sue on behalf of the State under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act, the litigant stands in the shoes of the State.

I. THE DECISION BELOW DOES NOT PRESENT A CONFLICT ON THE RIGHT TO PETITION.

Petitioner asserts that the decision below conflicts with the decisions of this Court and of other United States Courts of Appeal on the right to petition. Petitioner is wrong.

The decision below expressly recognized the First Amendment right to petition the government for redress of grievances. Pet., App. at 27-28. The decision held, however, that Petitioner had no such personal right when he chose to sue in the name and on behalf of the State of Minnesota. That choice by Petitioner distinguishes the decision below from the allegedly conflicting decisions cited by Petitioner. None of the cases cited by Petitioner as conflicting with the decision below involve a plaintiff suing in the name of and on behalf of a state. Rather, all Petitioner's cited cases involve

plaintiffs attempting to obtain redress for grievances impacting their personal interests.[3]

II. THE DECISION BELOW DOES NOT PRESENT A CONFLICT ON THE RECOGNITION OF A CAUSE OF ACTION AS A SPECIES OF PROPERTY.

Petitioner is wrong in his assertion that the dismissal of his Section 1983 claim conflicts with this Court's holding that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. There

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3. *Lehmuller v. Incorporated Village of Sag Harbor*, 944 F. Supp. 1087 (E.D.N.Y. 1996) (employee claim against employer seeking personal relief for alleged employment discrimination and violation of Section 1983 right to petition); *White v. Lee*, 227 F.3d 1214 (9th Cir. 2000) (claims by three individuals seeking money damages and injunctive relief for alleged violation of First Amendment rights of free speech and right to petition); *Greenwich Citizens Committee, Inc. v. Counties of Warren and Washington Industrial Development Agency*, 77 F.3d 26 (2d Cir. 1996) (suit by individual citizens and incorporated citizens' committee against local government entities seeking to recover money damages for alleged violation of Section 1983); *Chambers v. Baltimore and Ohio Railroad Co.*, 207 U.S. 142 (1907) (claim by widow against railroad to recover money damages pursuant to wrongful death state statute that created individual cause of action for plaintiff's benefit); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (action by one group of trucking companies against another seeking money damages and injunctive relief for its own benefit under the Clayton Act); *Wayte v. United States*, 470 U.S. 598 (1985) (selective prosecution defense in criminal prosecution for failure to register in violation of the Military Selective Service Act); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (claim for damages by merchants who had been damaged as a result of civil rights boycotts); and *Connick v. Meyers*, 461 U.S. 138 (1983) (Section 1983 claim by former assistant district attorney against her employer alleging wrongful discharge as a result of her exercise of free speech, seeking reinstatement and damages).

is no conflict between the Eighth Circuit's decision and the decisions of this Court on that issue to support a grant of the Petition.

The decision below does not challenge the holding that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. Rather, it properly recognizes that Petitioner never possessed a cause of action to be protected. The underlying State Court cause of action belonged to the State of Minnesota, not to Petitioner.

Petitioner cites to alleged ownership and leasehold interests in the real estate at issue in the State Court action, presumably in an effort to establish that he had personal rights denied. Pet. at 15. However, the District Court properly analyzed those claims of personal interests, holding that Petitioner's claims were the claims of the State of Minnesota and that Petitioner had made no showing that he sought to vindicate any personal property interests in that action. Pet., App. at 23.[4]

To the extent Petitioner now asserts that the decision below ignores these claimed personal property interests, his asserted error falls in the category of an erroneous factual finding, i.e., an alleged failure to acknowledge that Petitioner was seeking to redress his ownership and leasehold interests

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4. The State Court lawsuit was captioned, in part, "State of Minnesota, by Eric Ringsred." Pet., App. at 81. Additionally, the State Court Findings of Fact, Conclusions of Law, and Order for Judgment contain no findings establishing ownership or leasehold interests held by Petitioner in the real estate at issue and no request by or grant to Petitioner for relief related to personal interests. Dkt. No. 96, Ex. C.

in the State Court action. An erroneous factual finding does not often constitute grounds for the grant of a petition and Petitioner here provides no reason why his challenge should be an exception to the rule. *See* Rule 10, Rules of the Supreme Court of the United States.

III. THIS CASE DOES NOT HAVE FAR REACHING PUBLIC INTEREST LITIGATION IMPLICATIONS.

Petitioner argues that the decision below has deprived all citizens in the Eighth Circuit of the right to petition or litigate on matters of public concern. Pet. at 16, 17. If that were so, there could be few cases more worthy of review. But Petitioner misinterprets and greatly overstates the impact of the decision. The decision is a narrow one. It construes the rights created by two Minnesota state statutes and, applying those rights to the facts, determines that Petitioner's choice to prosecute the State Court action in the name of the State clothes him with the rights of the State, no more.

Petitioner is mistaken in his belief that citizens no longer have the right to litigate under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act. They can do so on behalf of the State as Petitioner did and they can obtain relief for the State as Petitioner did. They cannot, however, seek to personally profit from that litigation. If to profit from his activities is a right Petitioner would like to see exist for future challenges under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act, then his avenue to relief is to lobby the Minnesota State Legislature to amend those state environmental laws to grant him such rights.

Petitioner's argument that citizens in the Eighth Circuit can no longer litigate other public interest issues, including zoning, taxation and others, is based on nothing but Petitioner's erroneous reading of the decision below. The lower Courts' interpretations of rights available under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act do not preclude those challenges.

CONCLUSION

For the reasons stated herein, Respondents Team Duluth, The Duluth Area Chamber Of Commerce, Michael McNamara and David Ross respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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